

REMARKS

In response to the Office Action mailed July 6, 2005, the present application has been carefully reviewed and amended. Entry of the foregoing amendment and reconsideration of the application are respectfully requested.

Rejections under 35 USC §112*Claim 4*

Claim 4 stands rejected under 35 USC §112 as the Examiner states "what structure (in the elected embodiment) is responsible for the claim limitations directed to 'the diffractive optic is a hologram having a recorded image of an infinitely spaced focal plane' and how is this achieved?" [Paper 20050629, p. 3]

The structure in the elected embodiment responsible for the claim limitation is the recited, "diffractive optic mounted to the base." The Examiner's attention is directed to ¶ 21 of the written description which recites:

In the one configuration, the diffractive optic 30 is a hologram with a recorded image of a ground glass screen. More generally, the recorded image is preferably that of an image plane at infinity. Thus, a transmissive hologram having a recorded infinite image plane is preferably employed. It is understood that images for reconstruction can be recorded in the hologram. However, as such images are permanent and cannot be changed during operation or use of the head up display 10, the hologram can be recorded to provide the image plane at infinity. However, it is understood the

image plane can be located adjacent an eye of the user (intermediate the firearm and the user) or anywhere from the firearm to infinity. Thus, the image plane can be located from adjacent the user to infinity.

With respect to the Examiner's requirement that the claim limitation answer, "how is this achieved?" Applicant respectfully submits such is not a requirement of the claim.

Determining whether a claim is definite requires an analysis of "whether one skilled in the art would understand the bounds of the claim when read in light of the specification . . . If the claims read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, Section 112 demands no more." *Miles Lab., Inc. v. Shandon, Inc.*, 997 F.2d 870, 875, 27 USPQ2d 1123, 1126 (Fed. Cir. 1993). *Personalized Media Communications LLC v. ITC* (CA FC) 48 USPQ2d 1880, 1888

It is not the requirement of the claim to explain how a hologram having a recorded image of an infinitely spaced focal plane is achieved. Rather, if the claims read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, Section 112 demands no more. Therefore, Claim 4 satisfies 35 USC §112.

Claim 6

Similarly, Claim 6 is rejected as the Examiner requests, "what structure (in the elected embodiment) is responsible for the claimed 'the image appears as a reconstructed image at a plane located from adjacent the user to infinity at infinity' and how is this accomplished?" [Paper 20050629, p. 3]

The examiner is directed to ¶ 21 which recites:

In one configuration, the diffractive optic 30 is a hologram with a recorded image of a ground glass screen. More generally, the recorded image is preferably that of an image plane at infinity. Thus, a transmissive hologram having a recorded infinite image plane is preferably employed. It is understood that images for reconstruction can be recorded in the hologram. However, as such images are permanent and cannot be changed during operation or use of the head up display 10, the hologram can be recorded to provide the image plane at infinity. However, it is understood the image plane can be located adjacent an eye of the user (intermediate the firearm and the user) or anywhere from the firearm to infinity. Thus, the image plane can be located from adjacent the user to infinity.

"Specifications teach. Claims claim." *SRI Int'l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 n.14, 227 USPQ 577 (Fed. Cir. 1985).

It is not a requirement of the claim language to explain how a claim element is accomplished. Rather, if the claims, when read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, Section 112 demands no more. Therefore, Claim 6 satisfies 35 USC §112.

Claim 7

Claim 7 has been amended to provide complete antecedent agreement.

Claims 10 and 12

The Examiner also rejected Claims 10 and 12 as it was unclear "what is meant by the phrases 'a hologram mounted relative to the firearm' (claim 10) or 'the diffractive optic is a hologram' (see claims 2 and 4) or 'the hologram is moveable connected to the firearm' (claim 12)." The Examiner bases this request in view of Webster's definition of a hologram as "a three-dimensional picture that is made on a photographic film or plate without the use of a camera." [Paper 20050629, p. 3]

This exclusive reliance on dictionaries was recently addressed by the Federal Circuit. Specifically,

The main problem with elevating the dictionary to such prominence is that it focuses the inquiry on the abstract meaning of words rather than on the meaning of claim terms within the context of the patent. Properly viewed, the "ordinary meaning" of a claim term is its meaning to the ordinary artisan after reading the entire patent. Yet heavy reliance on the dictionary divorced from the intrinsic evidence risks transforming the meaning of the claim term to the artisan into the meaning of the term in the abstract, out of its particular context, which is the specification. The patent system is based on the proposition that claims cover only the invented subject matter. As the Supreme Court has stated, "[i]t seems to us that nothing can be more just and fair, both to the patentee and the public, than that the former should understand, and correctly describe, just what he has invented, and for what he claims a patent." *Merrill v. Yeomans*, 94 U.S. at 573-74. The use of a dictionary definition can conflict with that directive because the patent applicant did not create the dictionary to describe the invention. Thus, there may be a disconnect between the

patentee's responsibility to describe and claim his invention, and the dictionary editors' objective of aggregating all possible definitions for particular words. *Phillips v. AWH Corp.*, 75 USPQ2d 1321, 1332-1333, (Fed. Cir. 2005)

Further, the Phillips court stated:

Moreover, different dictionaries may contain somewhat different sets of definitions for the same words. A claim should not rise or fall based upon the preferences of a particular dictionary editor, or the court's independent decision, uninformed by the specification, to rely on one dictionary rather than another. Finally, the authors of dictionaries or treatises may simplify ideas to communicate them most effectively to the public and may thus choose a meaning that is not pertinent to the understanding of particular claim language. *See generally* Ellen P. Aprill, *The Law of the Word: Dictionary Shopping in the Supreme Court*, 30 Ariz. St. L.J. 275, 293-314 (1998). The resulting definitions therefore do not necessarily reflect the inventor's goal of distinctly setting forth his invention as a person of ordinary skill in that particular art would understand it. *Phillips v. AWH Corp.*, 75 USPQ2d 1321, 1332-1333, (Fed. Cir. 2005)

Applicant respectfully submits the term hologram as used in the specification, encompasses a pattern produced on a photosensitive medium that has been exposed by holography and then photographically developed, such as a three-dimensional diffraction pattern of the image of an object made using holography. As read in light of the specification, the term "hologram" encompasses a medium exposed by holography. Thus, Claim 10, which recites a hologram [the medium] mounted relative

to the firearm, or the diffractive optic as a hologram (Claims 2 and 4) or the hologram as moveably connected to the firearm, as shown in the present drawings and set forth in the specification, recites that the medium is moveable. Paragraphs 18-21 set forth a disclosure of the hologram.

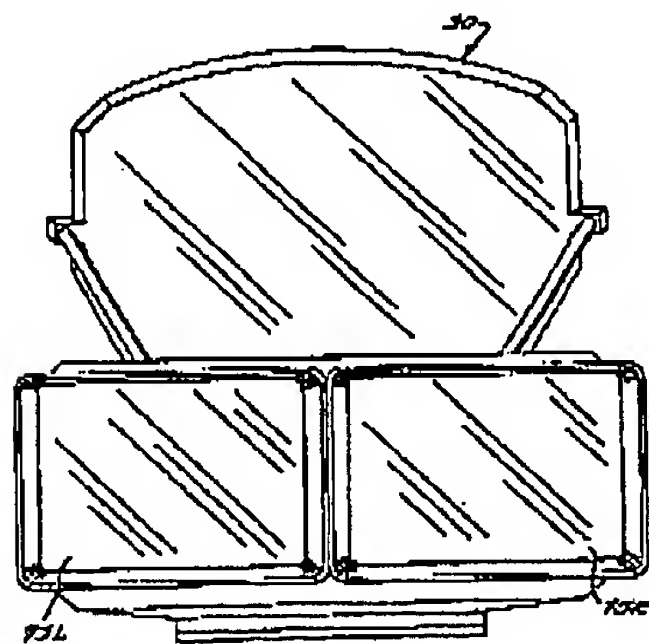
Therefore, Applicant respectfully submits all the pending claims satisfy 35 USC §112.

Rejection under 35 USC §102

Claims 1 - 4, 6, 16, and 18 stand rejected under 35 U.S.C. §102 as being anticipated by Ferrer (US Patent 4,799,765).

Claims 1 - 4, 6, 16, and 18

Ferrer is relied upon to disclose "a) a base see fig. 1, col, lines 56-58" [Paper 20050629, page 4]. These portions of Ferrer recite:



A front view of an integrated head-up and panel display system for aircraft is shown in FIG. 1. The system provides a head-up display to the pilot as well as two separate, side-by-side, panel displays, all mounted in the same housing. The system comprises the HUD optical combiner 30 and the left and right look-down display (LDD) screen assemblies 75L and 75R.

The examiner asserts "applicant has claimed "a base for cooperatively engaging the firearm". This claim language requires that a base be present for cooperatively engaging the firearm. This is not the same as a base in cooperative engagement with the firearm." [Paper 20050629, page 2] [emphasis in original]

As amended, Claims 1 – 4, 6, 16, and 18 recite in part, “a base cooperatively engaging the firearm.”

Ferrer does not disclose a base cooperatively engaging the firearm. Therefore, Ferrer cannot sustain a rejection of amended Claim 1.

As, Claims 2 – 4, 6, 16, and 18 depend from Claim 1, and include all the limitations thereof, these claims also overcome the outstanding rejection under 35 USC §102.

Rejections under 35 U.S.C. § 103

Claim 5

Claim 5 stands rejected under 35 USC §103 as being unpatentable over Ferrer in view of Giuffre. The Examiner asserts Giuffre et al. teaches a light valve that is an LCD (Col. 5, Lns. 18 – 19). This portion of Giuffre is reproduced below.

viewing by the user of the arrangement. The viewer mechanism 56 may be in the form of a LCD screen or a CRT screen. (Col. 5)

Applicant submits that, at most, Giuffre discloses that a cathode ray tube (CRT) screen or LCD screen can be used to view the converted signal from the transmitter. The cited language does not suggest an LCD is a light valve.

Giuffre does not teach that a light valve is an LCD. Giuffre discloses that a viewer mechanism allows a person firing a gun, rifle, or similar weapon, having a precision aiming device, to view the target without the need to maintain the head at a constant relation to the optical

portion of the aiming device. Giuffre employs the viewing mechanism such as a CRT screen to provide an image of an object at which the firearm is directed, wherein the CRT screen can be at a location spaced away from the optical sight of the firearm. Giuffre merely states that such display could be an LCD or a CRT screen. There is no support for the assertion that an LCD is a light valve.

Therefore, this rejection cannot be sustained.

Claim 7

Claim 7 stands rejected under 35 USC §103 as being unpatentable over Ferrer in view of McPheters.

Claim 7 depends from Claim 1, and as amended Claim 1 distinguishes over Ferrer, Applicant respectfully submits this rejection has been overcome.

Claim 8

Claim 8 stands rejected under 35 USC §103 as being unpatentable over Ferrer in view of Groh or Reed. The Examiner asserts it would have been obvious "to apply the teachings of either Groh or Reed and have a head up display that included a laser range finder in combination with the viewing optics." [Paper 20050629, page 5]

Claim 8 depends from Claim 1, and as Claim 1 has been amended to clearly distinguish the primary reference Ferrer, Applicant respectfully submits the rejection of Claim 8 cannot be sustained.

Claims 10 and 11

Claims 10 and 11 stand rejected under 35 USC §103 as being unpatentable over Ferrer in view of McPheters and Schneider. The Examiner asserts it would have been obvious "to apply the teachings of McPheters and Schneider to the Ferrer head up display and have a head up display used in combination with a different type of illuminating light source and with an aircraft having associated mounted firearms." [Paper 20050629, p. 6]

Claim 10 has been amended to clearly recite a compact head up display for a handheld firearm, wherein the hologram is mounted relative to the handheld firearm. Therefore, the reliance upon Schneider to teach firearms are commonly mounted to aircraft is now inapplicable, and thus this rejection has been overcome.

Claims 12 and 14 depend from Claim 10, and include all limitations thereof, these claims are also in condition for allowance.

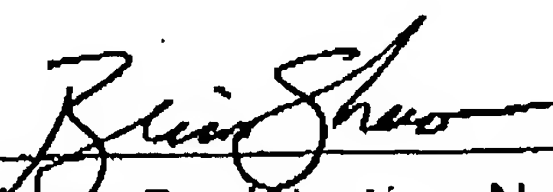
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Therefore, applicant submits all the pending claims, Claims 1-8, 10, 12, 14, 16 and 18 are in condition for allowance and such action is earnestly solicited. If, however, the Examiner feels any further issues remain, he is cordially invited to contact the undersigned so that such matters can be promptly resolved.

Respectfully submitted,



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